

NEW MEXICO CHILDREN'S COURT MEDIATION PROGRAM

MEDIATOR MANUAL

2016 - 2017

*Policies and Procedures for Mediating
Child Abuse and Neglect Cases*

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PURPOSE

This handbook provides the standards, forms and procedures of the Children's Court Mediation Program for its mediators, who provide direct services for interested parties, including family and professional participants, in child abuse and neglect cases. The program's website contains additional information, including access to the annual reports. Please visit: <http://adr.nmcourts.gov>.

ABOUT THE CHILDREN'S COURT MEDIATION PROGRAM

The New Mexico Administrative Office of the Courts (AOC) has collaborated with the Children, Youth and Families Department (CYFD) to mediate child abuse and neglect cases since 2000. The Children's Court Mediation Program offers mediation services in thirty (30) counties within twelve (12) judicial districts (2nd through the 13th), and provides support for the First Judicial District's (Rio Arriba, Los Alamos and Santa Fe Counties) in-house program. The program is funded by state general funds of the AOC as well as Title IV-B federal grant funds provided by the CYFD.

The Children's Court Mediation Program is a resource for families, CYFD staff and the Courts. The program provides a non-adversarial approach to help CYFD and the Courts to work together with families facing high risk and long-term issues such as substance abuse, domestic violence and mental illness, to reach permanency solutions for their children. The primary purpose of the program is to assist the Adoption and Safe Families Act (ASFA) goals of permanency, child safety and child well-being by:

- Offering an impartial forum to encourage open dialogue free of courtroom constraints;
- Clarifying issues, addressing conflict, and improving communication, thereby:
 - Conserving CYFD and Judicial time and resources, and
 - Improving the understanding of, and satisfaction with, the legal process;
- Engaging participants in collaborative discussion about the treatment plan so that specific needs are addressed and greater compliance can be achieved; and,
- Exploring and improving options for placement, permanency and services.

Cases are mediated at all legal stages of an abuse and neglect case from the initial court filing to reunification or termination of parental rights (TPR), including post adoption contact agreements (PACA). A professional mediator works with the parents, attorneys, CYFD case workers and other interested parties and assists in achieving agreements regarding placement, visitation, treatment and permanency. Mediation facilitates enhanced communication and problem solving by clarifying issues, exploring new options, and providing opportunities for collaboration.

The organizational structure of the program allows for centralized coordination through the AOC with local responsiveness to the district courts and CYFD offices. The AOC's Statewide Alternative Dispute Resolution (ADR) Coordinator oversees contracted Regional Coordinators who provide a local presence and work directly with the mediators to ensure the provision of quality services.

Mediation conserves both judicial and CYFD resources by reducing the time spent in preparing for and attending court hearings. For families, mediation can improve the quality of treatment plans, improve compliance with the plan, and reduce the time children spend in state custody.

CHILDREN'S COURT MEDIATION PROGRAM CONTACTS

AOC Statewide ADR Coordinator:

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Northern Regional Coordinator:

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Kim Montgomery

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SECOND, FOURTH, EIGHTH, TENTH, ELEVENTH
& THIRTEENTH JUDICIAL DISTRICTS

*INCLUDES THE COUNTIES OF: BERNALILLO, MORA, SAN MIGUEL,
GUADALUPE, TAOS, COLFAX, UNION, HARDING, QUAY, DE BACA, SAN JUAN,
MCKINLEY, CIBOLA, SANDOVAL & VALENCIA*

Southern Regional Coordinator:

575.571.9724

Nancy Garcia Tafoya

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THIRD, FIFTH, SIXTH, SEVENTH, NINTH
& TWELFTH JUDICIAL DISTRICTS

*INCLUDES THE COUNTIES OF: DONA ANA, CHAVES, EDDY, LEA, GRANT,
HIDALGO, LUNA, CATRON, SOCORRO, TORRANCE, SIERRA, CURRY,
ROOSEVELT, LINCOLN & OTERO*



FIRST JUDICIAL DISTRICT (SANTA FE, LOS ALAMOS & RIO ARRIBA COUNTIES):

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PROGRAM PROCEDURES

Statewide continuity is maintained, in part, through standard procedures and forms. Local Implementation Teams ensure that the local needs are addressed and may decide on more specific program protocols, including the logistics of scheduling and the location(s) for the mediations. The Implementation Teams (IT) are comprised of judges, respondent's attorneys, guardians ad litem (GAL), youth attorneys, CYFD staff and attorneys, court appointed special advocates (CASA), and other interested parties.

REFERRALS, ASSIGNMENTS AND LOGISTICS

At any time after filing the case, the CYFD or court may refer a case to mediation. The regional coordinator will review the case for appropriateness and budget availability. Some cases will be denied mediation services because of insufficient budget or because the case is not appropriate for mediation. If all parties agree to mediation and the case is accepted, the regional coordinator can request, and the children's court attorney (CCA) can prepare and file a "Stipulated Order for Mediation." The court may also issue an "Order for Mediation" at any stage during a legal case.

Assignment of Case to Mediation

All child abuse and neglect cases, from custody (i.e., child is removed from the home) and legal filing of the case to reunification (i.e., child is returned home) or the termination of parental rights, as well as open adoption negotiations, may be assigned to mediation as follows:

- *Legal Stage Cases* – Mediation may occur at any time during the legal process by a request or referral to the regional coordinator, or through a court order.
- *Open Adoption Negotiations* – Mediation for post adoption contact agreements are considered by request to the regional coordinator and may require a stipulated order filed with the court.

Mediations should be initiated and concluded within 60 days of the referral unless all parties agree to an extension of time.

Mediator Pool and Selection

[Forms: Case Referral Intake]

The regional coordinator maintains and provides a list of qualified mediators to the members of each Implementation Team. Mediators are assigned to cases at the discretion of the regional coordinator. Mediators receive a *Case Referral Intake* form that includes the date and time of mediation, the names of the parties expected to attend, and the stage of the case at which the mediation is occurring (e.g. pre-adjudicatory, pre-permanency, termination, etc.). Mediators should not serve any case or participant where there is an actual, potential or perceived conflict of interest. Mediators who identify a personal conflict of interest, or finds circumstances that may compromise his/her neutrality, must immediately inform the regional coordinator.

Location

Mediations typically take place either at the local judicial district courthouse or CYFD office. Sessions may be scheduled at another location with the agreement of all parties.

Notification of Participants

[Forms: Case Referral Intake]

Generally, the court mails signed copies of the “Order for Mediation” to all parties entitled to notice including, respondents’ attorneys, GALs, youth attorneys, permanency planning worker, CCA, CASA, Citizen’s Review Board (CRB), and the regional coordinator. Mediators review the *Case Referral Intake* form and contact all participants to confirm the day, time and location; identify issues (e.g., plea, treatment plan, placement, visitation, change of plan, termination, open adoption); gather information that may affect the process (e.g., time constraints, teleconferencing, transportation, need for interpreter(s), security concerns, mental health or cognitive concerns); and answer any questions the parties may have about mediation. Contact with all parties should be made within 3 business days after the referral is received. Mediators are responsible for checking with CYFD or the courts about any special arrangements necessary to accommodate the participants.

Compensated Service Time Limit

Each family may receive a maximum of five (5) hours of mediation services in legal stage cases for time-limited reunification (TLR), and a maximum of ten (10) hours of mediation services in open adoption (OA) stage cases to negotiate a post-adoption contact agreement. Regional Coordinators may grant additional time for unusual circumstances, including for mediations that require translators or other special accommodations, and cases that involve the Indian Child Welfare Act (ICWA). Determinations will be made on a case-by-case basis. Mediators are not compensated for service time above the maximum hours absent the determination of an exception by the Regional Coordinator.

Invoice Errors

Strict accountability is required for the public funds supporting this program.

Accordingly, compensation may be delayed and denied for inaccurate or incomplete invoice packets. To ensure prompt payment, please attend to the details required on the invoice, and be sure to enclose any supporting documents, including prior approvals for overnights and for exceeding service time limits. The Regional Coordinators and AOC will make every effort to carefully review the submissions. Rejected invoice packets will be returned to you with instruction for corrective action and a new original signature. Payment cannot be issued unless the invoice is complete and accurate.

MEDIATION PARTICIPANTS

Parties in an abuse and neglect case typically include the accused parent(s) and the CYFD. While the parties to the court case are necessary participants of the mediation, other family members and professionals are also included. Additional participants may be included if ordered by the court or if agreed upon by the parties. Welcome and treat

all participants with respect, regardless of their condition or circumstances, and prepare for any special circumstances they may present.

Cultural Competency

Individuals carry different values, beliefs, assumptions, and expectations depending on their own backgrounds. Culture, in a broad sense, is shaped by several elements, among them: language, religion, gender and orientation, family, physical ability and limitations, race and origin, health and socio-economic status. Mediators are better able to navigate the conflicts and misunderstandings between parties when they recognize and appreciate the cultural differences that may complicate the dispute. Recognize that everyone has something of value to contribute. Know that your own background may limit your awareness of, and appreciation for, the diverse experiences of others, so foster openness within and be patient with others. Above all, appreciate that the dynamic tension between cultures can create an opportunity for learning, growth and creativity which may permanently change the perspective of those involved.

Family Participants

Family participants may include the respondent parent(s), guardians, foster parent(s), prospective adoptive parents, children, adult relatives such as grandparent(s), aunts and uncles, and sometimes tribal members.

Guardian

A person having the duty and authority to make important decisions in matters having a permanent effect on the life and development of a child and to be concerned about the child's general welfare.

Prospective Adoptive Parents (PAP) or Family

In open adoption cases, the family identified by CYFD to adopt or take legal guardianship of a child or children.

“Fictive Kin”

A term sometimes used to describe individuals that are not relatives, but have an emotionally significant relationship with the individual or family.

Custodian

A custodian is a person, other than a parent or guardian, who exercises physical control, care or custody of the child, including an employee of a residential facility or a person providing out-of-home care.

Professional Participants

Professional participants may include the Respondents' Attorneys, Children's Court Attorney, Guardian ad Litem (GAL), Youth Attorney(s), Permanency Planning Worker (PPW), CYFD Supervisor, , and Court Appointed Special Advocate (CASA).

Respondent Attorney (RA)

Legal counsel for the parent(s). The Children's Code requires that the court appoint counsel for the parent or parents "at the inception of the proceeding," which means as soon as the petition alleging abuse or neglect is filed. Appointed

counsel serves until the custody hearing, at which time the court makes an indigence determination and appoints counsel for parents in financial need.

Children's Court Attorney (CCA)

Legal counsel for CYFD at every stage of the abuse or neglect proceeding, from the initial determination regarding whether to file a petition through dismissal.

CYFD – Protective Services Division (PSD)

PSD is the division within CYFD that responds to and investigates child abuse and neglect allegations and provides initial services to stabilize a family.

CYFD - Permanency Planning Workers (PPW)

The CYFD case workers who work with families once their children are under legal custody of the state.

CYFD - Adoption Workers

In Open Adoption cases, these are CYFD case workers who match children with adoptive families. Typically, they are assigned after TPR or relinquishment. However, they may not be assigned before the child is identified as available for adoption.

Guardian Ad Litem (GAL)

An attorney appointed by the children's court to represent and protect the best interests of the child in a court proceeding. A GAL represents the child in an abuse and neglect case from its inception to its conclusion.

Court Appointed Special Advocates (CASA)

Court appointed volunteers who receive special training assist the court in determining the best interests of the child by investigating the case and submitting a report to the court.

Special Circumstances

In order to prepare, it is best to be aware of the special circumstances that can impact the mediation process. Although many of the circumstances occur as the result of the participating family members, the participating professionals can also create challenges.

Security

The mediator is responsible for arranging for security, if indicated, at the designated court or CYFD location. The Regional Coordinator may be contacted to assist in making the arrangement. Security is indicated for participants with a history of violence, and may be indicated for some participants with behavioral health issues (active substance abuse, psychotic episodes, etc.).

Interpreters

The mediator is not responsible for obtaining an interpreter. The respondent attorney should request an interpreter (even for last minute mediation). For Open Adoption negotiations that occur after the termination of parental rights, the

interpreter may be requested by the respondent attorney, if they are still involved in the case, or by CYFD.

Incarceration

Family members may be participating by prison phone or arriving in shackles with a guard. Restrictions related to their incarceration are likely to impact the mediation process. Phone access may be limited to certain times of day and length of time, and the phone may be suddenly disconnected. The phone connection may also be poor, so other participants will need to be on-time and attentive. The attorney for the incarcerated party is responsible for arranging for the party to be transported to mediation. Communicate with the guard about whether the offering of food and beverages is a concern, and whether the guard can sit in a location slightly removed from the participant table.

Urinalysis (UA) Testing

There may be attempts to test the urine of respondents during the course of the mediation, since they are easily found at that time. Testing is court ordered, and may occur randomly (not scheduled) by a mobile unit. Mediators should firmly resist any outside disruption of the session and direct the unit to wait until after the mediation session.

Children/Youth Participation

Younger people may participate in mediation. Children are represented by either a GAL (for children under age 14) or a Youth Attorney. Typically, younger children will participate only when the Guardian ad Litem (GAL), who is assigned by the court to represent the child's best interest, decides it is appropriate. Mediators should consult with the GAL or Youth Attorney regarding concerns about a child's participation.

Indian Child Welfare Act (ICWA)

When native children are at issue in a case, federal law provisions may apply. In addition, tribal members may be included in the mediation, and special consideration should be given to the child's connection to the tribe, cultural consideration, placement efforts, and jurisdiction. Contact the regional coordinator to assist in these cases.

CYFD Participation Issues

Engaged Participation. Mediation is not a simple reading of a list. Some CYFD workers will simply read the Treatment Plan to the family, and not recognize the opportunity to listen to the family members and to communicate the "whys" of CYFD's involvement. Families may be confused about why CYFD is involved in their lives, what issues were identified, why the Treatment Plan includes certain elements, what is required for the custody of child(ren) to be returned, what will happen in each stage of the case, and how long things will take. CYFD may not be aware of real or perceived barriers, such as transportation difficulties, that the family may face in complying with the Treatment Plan. Where attorneys are restricted in the legal process, mediation offers an unusual opportunity for the

CCA to talk and listen to the family, instead of just to their attorney, and that interaction can offer dynamic insights.

Family Centered Meetings (FCM) [formally “Team Decision-Making” (TDM)]

Mediation is not a Family Centered Meeting. Some CYFD workers may not understand the difference between mediation and FCMs. FCMs involve all parties concerned about a child's welfare in order to develop a plan for that child. Most plans must be approved by a judge if the case has been adjudicated. In some cases, the conference takes place before any court action and prevents court involvement while providing services to the family. Critically, FCMs are led by a CYFD employee who acts as a facilitator, not a third-party neutral mediator.

Attorney Advocacy in Mediation

Mediation is not litigation. Attorneys can play a supportive role in the mediation process by encouraging their client(s) to express thoughts and feelings, empower them to negotiate on their own behalf, advise them about when taking a break may be wise, help their client to recognize the benefit of sharing and learning during the process, reality test contemplated solutions (is it a ‘workable’ solution?), assist them to generate options and to example consequences, and help to draft terms of an agreement. Unfortunately, most attorneys are not trained to be supportive in this way. They are trained to be adversarial and fiercely protective of their client’s interests and rights and to focus on “facts” and law. As a result, they may not realize that this approach in mediation may serve to disempower and undermine their client(s). During pre-mediation discussions, mediators can stress the importance of empowering clients to speak up and to actively engage in discussions; instead of speaking for, or on behalf of their client(s), as they might in court.

THE MEDIATION PROCESS

The mediation process is structured to provide a reliable process for constructive communication and consensus-building. Mediators may use a variety of techniques to assist the parties in clarifying issues and achieving agreement about topics such as placement, visitation, treatment plans, and permanency. No case is exactly the same, so mediators are able to adapt to the needs of the participants in order to help them to identify the areas of agreement and the next steps for moving forward.

The mediation process generally has three stages: pre-mediation, mediation and post-mediation. Each stage may have a different focus and strategy for consensus-building, as described below. Not all of the strategies are utilized in every case, and they are not necessarily used in a prescribed or linear fashion.

Confidentiality

[Forms: Agreement to Mediate, Order for Mediation]

All mediation sessions are conducted pursuant to either a court order or a signed *Agreement to Mediate* form. *Orders for Mediation* and *Agreements to Mediate* typically state that mediation sessions are private and confidential, except as provided by law.

Confidentiality requires that no one disclose the information shared in the context of mediation, and that the information may not be offered as evidence in court. However, when new information (i.e. information that is not already known by the appropriate authorities) arises in a mediation regarding physical, emotional and/or sexual injury and/or neglect to a child, or imminent harm to an adult, a disclosure of that information may be required by law. Mediators may discuss concerns regarding the content of mediation sessions only with their mentor, regional coordinator or the Statewide ADR Coordinator.

Pre-Mediation

This stage includes preparation activities that the mediator engages in prior to convening the participants together, regardless of the need to bifurcate. NOTE: *Before* communicating with parents or children directly, the mediator must always obtain permission from their legal counsel.

Logistics management

If there is not a set place and time, the mediator is responsible for working with the parties to schedule the session(s). If the mediation time is set by court order, the mediator will typically contact the parties once or twice to remind them of the place and time: first when the mediation is assigned, and then a second time one or two days before the mediation.

Education about the mediation process

Mediation is often new to the parents, so the mediator should take time to explain the mediation process, the mediator's role, confidentiality, expectations, willingness to participate, goals for identifying areas of agreement and next steps. If the professional participants (attorneys, CYFD) are new to the process, the mediator should educate them as well.

Early issue identification

The mediator speaks with all parties in the days before the mediation, or on the day of, to identify topics for discussion and issues that could affect the design of the mediation process. Topics that a mediator might want to know about in advance might include a plea agreement, discussion of placement of a child, or certain proposed services for parents or children. Issues that could affect the design of the mediation might include substance abuse, mental health issues, domestic violence, need for interpreters, inability of the parties to communicate in the same room, Indian Child Welfare Act (ICWA) applicability, transport of a participant from jail or prison, or the participation of a child or teenager.

Mediation screening

In some cases, the mediator may find a case to be inappropriate for mediation in that moment. This is unlikely to occur with a court-ordered mediation, and is somewhat more common in mediations referred by CYFD. When this occurs, the mediator communicates with the regional coordinator and the necessary parties to close the case file.

Other pre-mediation benefits

Pre-mediation may serve as an opportunity for parties to release emotions about the case, the children, or the other parties in advance of the mediation session; expressing these emotions in advance often allows the session to be more productive.

Mediation

[Forms: Agreement to Mediate, Report of Mediation]

This stage includes activities that the mediator undertakes during the time the participants convene and engage in mutual discussion. Most mediations are scheduled for one to two hours, although cases that involve permanency or open adoption may last longer or include multiple meetings. Consider that it may be appropriate to involve some participants (children, service providers, etc.) for only part of the mediation.

Setting the tone of the room

The mediator is responsible for creating a setting that encourages constructive communication. Setting the tone is important, and includes how the mediator welcomes the parties to create a friendly and productive environment. Most mediators set the table with tissues, water, a small snack, and a phone for conference calls if necessary. The mediator is responsible for respecting the space and returning the room to its previous arrangement after the mediation.

Mediator's opening statement [Forms: *Agreement to Mediate*, *Report of Mediation*]

The mediator makes an opening statement to convene the mediation. Most mediators review their role and the role of mediation. Other topics may include confidentiality, the voluntary nature of mediation, and any logistical matters. The mediator reviews and distributes the *Agreement to Mediate* or *Report of Mediation* (for court-ordered mediations) at this time.

Introductions

In most cases, it is useful to have everyone at the table introduce themselves with their name and role, even if the parties have met at previous hearings or meetings.

Creation of an agenda

In most cases, the parties have the opportunity to create the agenda and add any items that they wish to discuss during the mediation. The agenda will differ for each mediation. Agenda items may include:

- Whether the complaint of abuse or neglect should be dismissed
- Plea
- Status of the children (e.g., safety, behavior, education, medical issues, psychological issues)
- Services for the children (e.g., counseling, medical services, mentoring)
- Services for parents (e.g., counseling, drug or alcohol assessment and treatment, parenting classes, employment and housing referrals, financial assistance, transportation)
- Temporary and permanent placement of the children

- Visitation by parents, siblings, and other relatives, and arrangements for supervision and transportation
- Goals for the children (e.g., reunification, adoption, independence)
- Progress being made under the plan
- Change of plan (e.g., from reunification to adoption)
- Guardianship
- Post-adoption contact between birth parents and prospective adoptive parents

Discussion of the issues

In the discussion of the issues, mediators may use all of the mediation techniques in their toolkit to find the areas of agreement and try to break any stalemates. Issues may be intertwined and do not separate easily into a step-by-step discussion. Mediators may play a valuable role reality-testing certain ideas and confirming the parties create an agreement that will work for everyone in the future.

Drafting an agreement

The mediator is often responsible for helping to draft the written statement of the parties' areas of agreement. The draft should be concise and readable, and reflect the participant's words. The mediator may reframe to use positive neutral terms instead of hurtful language. The mediator should ensure that everyone clearly understands the areas of agreement, how the agreement will be signed (either at the mediation or after review by legal counsel), and how a written agreement is likely to be legally binding and not confidential. In some mediation settings (e.g., Second Judicial District pre-adjudicatory hearing mediations), written agreements are uncommon, and the mediator will help outline the agreement via a verbal summary.

Legal-stage cases. If an agreement is reached during mediation, the mediator may assist parties with drafting any written agreement for review by all parties. The mediator is generally responsible for securing signatures on the agreement and on the *Report of Mediation* form, which is filed with the court by the CCA. The court may more easily enforce an agreement if that is also filed.

PACA's. If the birth and prospective parents reach an agreement on post-adoption contact, someone must be designated to draft the terms. That person is also responsible for writing the final agreement. The mediator should keep a draft and provide a copy to CYFD. The mediator may distribute the draft to all parties and their attorneys for review. The mediator should get signatures to finalize the agreement. The finalized agreement must be filed in the court (by the GAL or other professional) with the final adoption decree. The PPW or adoption worker will place a copy of the PACA in the case file. The adoption worker should provide a copy of this agreement to the Placement Social Worker, so the Placement Social Worker can place a copy in the adoptive family's file.

No agreement

[Forms: No Agreement Letter]

If there is no agreement reached, the mediator will distribute a *No Agreement Letter*, and close the mediation case.

Post-mediation

[Forms: Family Participant Feedback, Mediation Case Record, Invoice]

In most cases, the mediator's work with the participants is complete at the close of the mediation. In some instances, however, the mediator may distribute a draft agreement to the parties, or may serve as a conduit for signatures on a finalized agreement. In rare cases, a second meeting may be necessary. Family participants are asked to complete *Family Participant Feedback* forms at the end of the mediation. The mediator must complete a *Mediation Case Record* form for each mediation referral and include it with the completed feedback forms and the mediation *Invoice* within 15 days of the completion of the mediation.

Modification of agreements

The signing parties may collectively agree to modify the agreement at any time. Any amendment should be written, signed and dated, and may be filed with the court for later enforcement. If the CCMP mediation case is closed the parties may, at their own expense, utilize a private mediator or attorney to assist.

Enforcement of agreements

Agreements, whether oral or written, may be enforced by the court. Written agreements that are signed by the parties and filed with the court are the easiest to enforce. Agreements that are signed by attorneys on behalf of their clients may also be enforced.

MEDIATOR TRAINING AND SUPPORT

Continuing Education Requirements

Mediation is a highly specialized and professionally demanding service that requires mediators to continually improve their skills and enhance their knowledge. The continuing education requirement is to complete 12 hours of related coursework per contract year (July through June). The credit hours must be in the areas of child welfare, domestic relations, domestic violence, behavioral health, conflict and communication, or advanced mediation skills. Mediators are strongly encouraged to obtain continuing education credits beyond the minimum requirement in any area that supports their personal and professional goals. Up to six additional continuing education credits earned in one year may be applied to the requirements of the next contract (or fiscal) year. The AOC requires the submission of the certificate of completion *and* a course description of the topics covered and hours of instruction. If a certificate of completion is not issued, a signed attestation may be submitted to verify the hours and coursework attended. Report earned continuing education hours on the *Mediator Continuing Education – Standard Reporting Form*, and submit to AOC by May 1 of each year. Failure to complete the continuing education requirements may result in the loss of consideration for a contract in the next fiscal year.

Mentoring and Co-Mediation

Mediators are supported in many ways, including through mentoring and co-mediation sessions. Co-mediators offer opportunities for learning through peer-review, networking and collaboration. Mentoring may be used when mediators work in a new county or judicial district, for mediators recently contracted by the program, or at the regional coordinator's suggestion. Mediators must comply with the mentoring process, and will have a choice of mentors to support a positive experience. In addition, there are mandatory mediator meetings a few times a year to provide updates as well as ongoing informal opportunities for peer mentoring and support.

Insurance

The program requires that mediators carry independent mediator liability coverage insurance that includes family mediation. Professional liability coverage can be obtained through a membership with various professional associations including: the Association for Conflict Resolution (ACR) www.acrnet.org; the Association for Family & Conciliation Courts (AFCC) www.afccnet.org; the American Bar Association (ABA) www.americanbar.org and www.mediate.com; or by directly contacting the insurance underwriters, such as Complete Equity Markets, Inc. at 800-323-6234 or www.cemins.com, or Pinkham Agency at www.pinkhamagency.com/. Proof of insurance coverage must be submitted to the AOC at the start of each contract year.

IRS Reporting

[*IRS Form 1099*]

Mediators of the Children's Court Mediation Program are independent contractors for the Administrative Office of the Courts (AOC). At the end of each year, the AOC will issue a Form 1099 to both the mediator and the Internal Revenue Service (IRS). Form 1099 reflects the amount of money the AOC has paid the mediator over the tax year. If the mediator makes less than \$600, a Form 1099 may not be issued.

ADOPTION AND SAFE FAMILIES ACT (ASFA) TIMELINE AND MEDIATION

ASFA is a federal law passed to improve the safety and wellbeing of children, to promote permanency (long term stability) for children, and to support families. It requires that permanency hearings occur within 12 months of initial placement, sets deadlines for the filing of TPR petitions, and establishes the right of foster and adoptive parents to receive notice of, and appear in, juvenile and family court proceedings. Mediators need to be aware of the ASFA timeline and how mediation is affected by each stage of the court case.

Custody Hearing (a/k/a "10-day Hearing")

The hearing following the filing of the petition to determine whether there is probable cause to believe that interim custody of the child by CYFD is necessary to protect the child's health and safety. The court must consider whether reasonable efforts were made to prevent removal. No determination or remedy can be ordered other than

removal of the child from the dangerous condition. If probable cause is not found, custody is returned to the parents pending adjudication and evaluation.

On rare occasions, the court may return the child(ren) to live with the family while the state retains legal custody and is responsible for the safety of the children. The family will still have to work a treatment plan and be accountable to the state. Not all districts use mediation at this point, in the larger districts (2nd, 3rd and 13th) it is very effective as the sooner you can get the family engaged the better.

Pre-Adjudicatory Meeting (a/k/a “Treatment Planning Conference”)

This is a legally required, mandatory meeting scheduled prior to the adjudicatory hearing to attempt to settle issues and develop a proposed treatment plan to serve the child's best interest. At this stage, mediation replaces (meets the legal requirement of) the Pre-Adjudicatory conference.

In some districts, mainly the 2nd, families can take a plea immediately after the mediation and waive the adjudicatory hearing. It is the mediator's job to let the hearing office know as soon as possible if that will happen so that a Judge or Hearing officer is available to take the plea. This is beneficial to all of the parties as it frees up the docket and families can get started on their treatment plans sooner.

Adjudicatory Hearing

This hearing must be initiated within 60 days of service of the petition. This is a trial at which the petitioner (CYFD) must prove by clear and convincing evidence that the child is abused or neglected, as defined by statute. It is a full evidentiary hearing complete with all of the due process protections. Findings made at this hearing determine whether the state continues to intervene in the life of the family.

Dispositional Hearing

In this hearing the court adopts the treatment plan, establishes legal custody of the child(ren), sets visitation arrangements if appropriate, and determines findings of fact as required by statute. This hearing may be held in conjunction with the adjudicatory hearing or within 30 days thereafter.

Initial Judicial Review (IJR)

The initial judicial review hearing must be held within 60 days of the disposition, regardless of whether the dispositional hearing was held in conjunction with the adjudicatory hearing, or at some time thereafter. Federal law requires states to review a child's case at least every six months after placement in foster care to determine whether the placement is still necessary and appropriate, the treatment plan is properly and adequately followed, and if progress has been made toward reunifying the family. Case review also sets a target date for the child's return home, adoption, or other permanent placement.

Occasionally a Judge will order mediation at this stage so the parties can look at what is working or what is not and decide on a plan to move forward.

Pre-Permanency Hearing Meeting

The parties are required to attend a meeting before the initial permanency hearing to attempt to settle issues. Mediation is rarely requested to replace this meeting.

Permanency Hearing

The purpose of permanency hearings in general is to compel a resolution of the case so the child does not remain indefinitely "in the system." The court conducts a permanency hearing to determine what permanency plan is in the child's best interest.

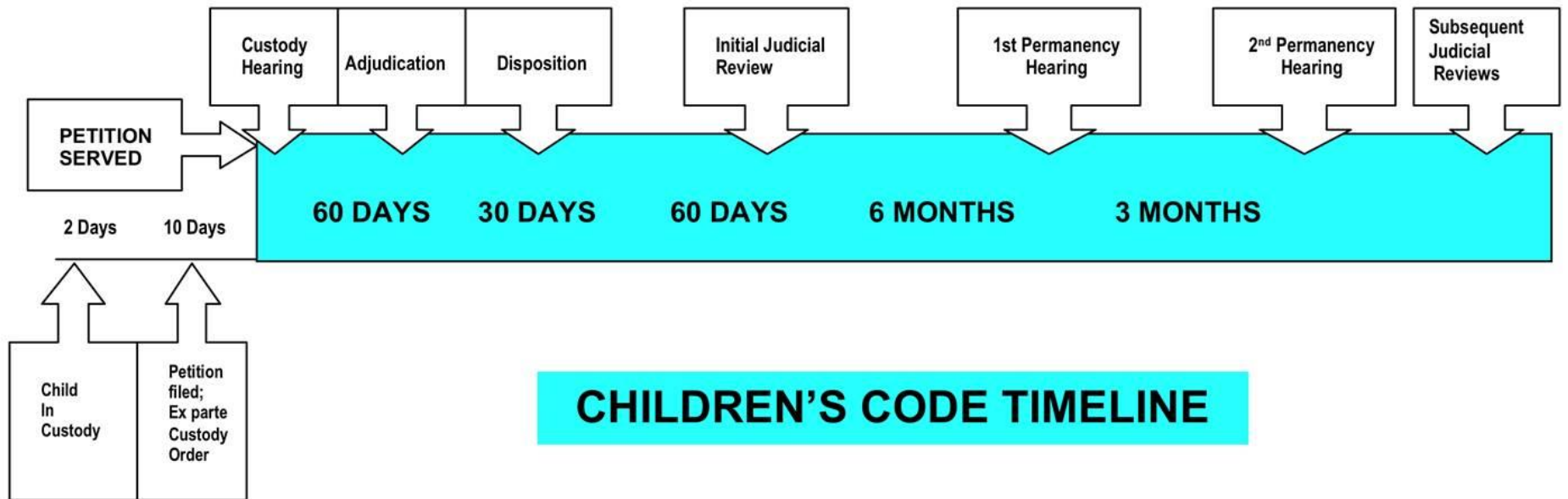
Mediation is most often ordered at this hearing, in an effort to have the parties review the status of the case and decide on a plan to move forward.

Termination of Parental Rights (TPR)

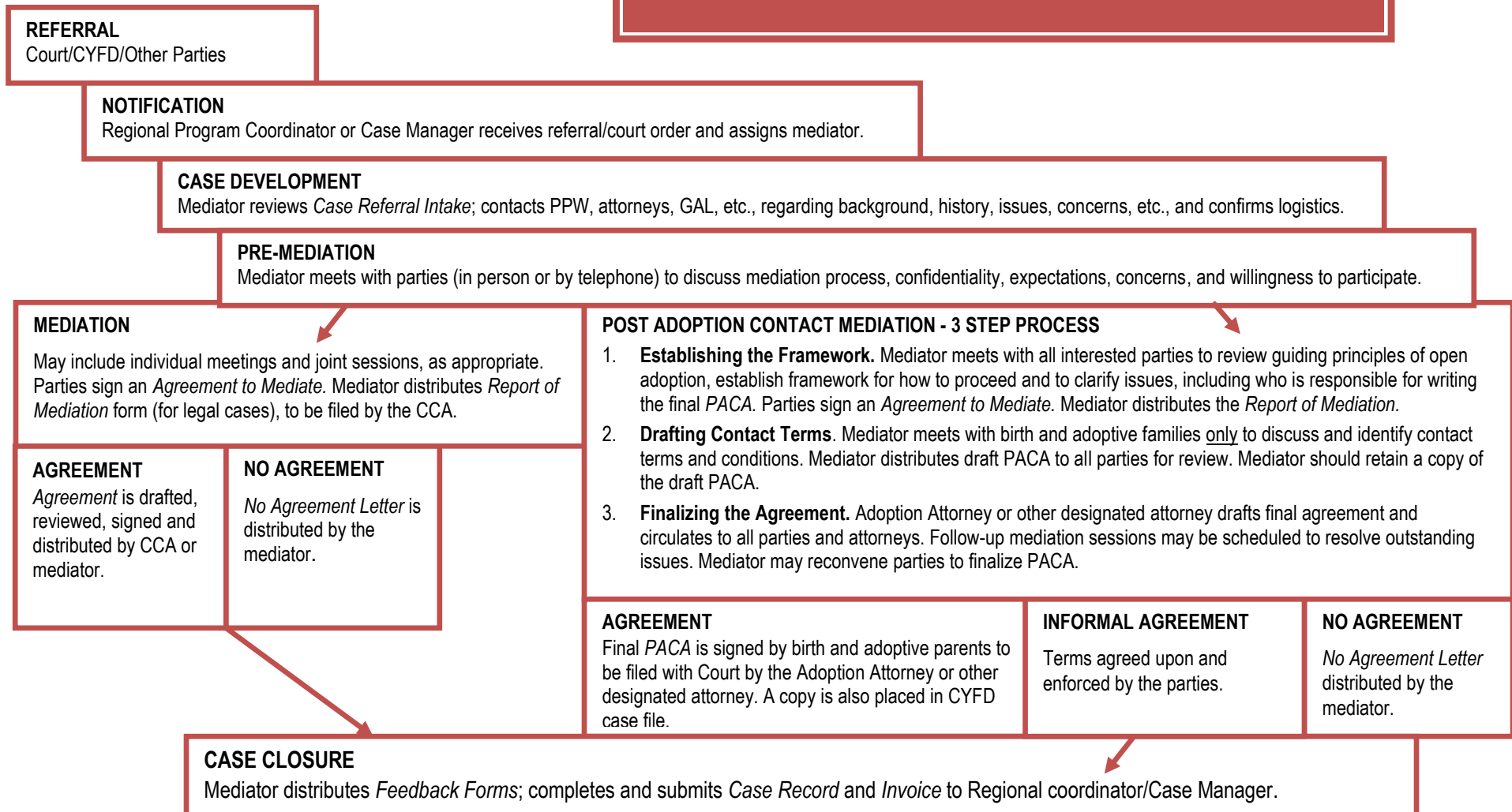
A judicial proceeding where parental rights are permanently terminated. A judge may determine that a parent has failed to substantially comply with the treatment plan in the time allotted by law.

At this time if a prospective adopting family has been identified then CYFD may request an Open Adoption Mediation. Mediation can occur before or after the TPR hearing.

IMPORTANT NOTE: The OA mediation is not contingent on relinquishment and the purpose of mediation is not to discuss relinquishment. It is only to explore open adoption as an option for the families moving forward, not to pressure the biological or potential adoptive parent(s). Know that CYFD does provides relinquishment counseling.



CHILDREN'S COURT MEDIATION CASE FLOWCHART



GLOSSARY OF TERMS

The following is glossary of terms. It is not meant to be an exhaustive list, but serves as a quick reference for mediators who work with the child welfare system. The definitions are intended to be understandable by individuals outside of or new to the child welfare system and include legal/court terms common in child abuse and neglect cases.

Aging Out

Aging out refers to when a youth leaves foster care because they have reached a certain age (typically 18) without obtaining permanence through returning home, adoption or guardianship or kinship care.

Children's Code

The Children's Code is a set of statutory state laws intended to protect the safety and welfare of children. The law creates a range of possible state actions when abuse or neglect is suspected or confirmed, from emergency intervention to permanent placement of the child outside the home. Part of the Children's Code, the *Abuse and Neglect Act* (§32A-4-1, et. seq., NMSA) authorizes the state to act in these cases through CYFD.

Continuance

When a court hearing is not completed, it can be "continued" to another date. For example, this may occur when someone whose presence is needed does not come to court, or when the judge does not have sufficient information to act on the case.

Concurrent Planning

A process that allows CYFD to work on two or more permanency plans at the same time. For example, while primarily focusing on reunifying a child with her parents, the team may also begin to consider and plan for adoption or guardianship if reunification is not successful within desired and/or legally required time frames.

Emancipation

Emancipation is the legal process by which a minor child petitions the court to allow him to become an adult in the eyes of the law before his/her 18th birthday.

Family in Need of Court Ordered Services (FINCOS)

Child(ren) may be returned to the family with the understanding that the family has needs to address (ex. poverty, child care, etc.), and the state will retain custody or responsibility for the safety of the children until the needs are addressed through court ordered intervention.

Final Adoption Decree

The document signed and filed with the Court and the State of New Mexico that legally transfers parental rights to adoptive parents, per the Adoption Act, §32A-5-1, et. seq. NMSA.

Permanent Guardianship

A judgment of permanent guardianship transfers legal responsibility and legal authority for the child to a third party who has offered to become the child's guardian.

Petition

A case begins with the filing of a petition by the CYFD alleging abuse or neglect. If the CYFD case worker and supervisor responsible for the investigation of a report decide that CYFD should seek legal custody of the child, they request the CCA endorse that filing a petition is in the best interest of the child. If the child is already in CYFD's emergency custody, the petition and a motion for an *ex parte* custody order must be filed within two working days. CYFD also may file a motion for an *ex parte* custody order if it believes the child's welfare demands it, even if the child is not already in custody.

Plea

A respondent to an abuse and neglect case may decide to enter admissions either in the form of a plea or no contest. The pleas as defined by statute include: B1 abuse (placing at risk of harm); B2 abuse (physical/emotional/psychological); B3 abuse (sexual); B4 endangering; B5 cruelty; C1 aggravated great bodily harm to child; C2 aggravated great bodily harm to parent; C3 aggravated abuse; C4 prior TPR; E1 abandonment; E2 inability to parent; E3 failing to protect from abuse; E4 inability to care for; and E5 unlawful placement. The plea is often an issue for mediations occurring before adjudication.

Relinquishment

A judicial proceeding where a parent surrenders parental rights voluntarily.

Reunification

Return of a child to the family from which the child was removed. Most often, reunification involves the child's birth family, but in cases where a child was removed from an adoptive family or other legal guardian, reunification can also occur.

Treatment Plan

The plan developed by the CYFD with the parents and youth (if appropriate), and their legal advocates, that outlines the types of services that the child and the family will receive, such as parenting classes, mental health or substance abuse treatment, and family counseling; reunification goals, including visitation schedules and a target date for a child's return home. The agency agrees to provide the services and the parents must agree to work on their assigned tasks. Plans typically include requirements parents must meet before their children can return to them. The court reviews and may modify the recommended treatment plan.

Visitation/Family Time

Time with the family while the state retains custody, usually a schedule of visits. May be supervised or unsupervised.

LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
AOC	Administrative Office of the Courts [Judicial Branch]
ASFA	Adoption and Safe Families Act
CASA	Court Appointed Special Advocates
CEU	Continuing Education Unit (1 hour = 1 credit)
CCA	Children's Court Attorney (represents CYFD)
CCMP	Children's Court Mediation Program
CYFD	Children, Youth, and Families Department [Executive Branch]
GAL	Guardian Ad Litem
ICWA	Indian Child Welfare Act
IJR	Initial Judicial Review
OA	Open Adoption
PACA	Post Adoption Contact Agreements
PAP	Prospective Adoptive Parents
PPW	Permanency Planning Worker (CYFD)
PSD	Protective Services Division (CYFD)
RA	Respondent Attorney (represents parents)
TLR	Time Limited Reunification
TPR	Termination of Parental Rights

Websites for State and Federal Statutes and Regulations:

Federal statutes: <http://uscode.house.gov>

Federal regulations: <http://www.gpoaccess.gov/cfr/>

NM statutes, court rules & forms: <http://www.nmonesource.com/nmnxtadmin/NMPublic.aspx>

New Mexico Administrative Code (NMAC): <http://www.nmcpr.state.nm.us/nmac/>
(Regulations of state agencies, including CYFD)

NM District Court Locations: <http://www.nmcourts.gov/othercourts.php>

The Children's Court Mediation Program: <http://adr.nmcourts.gov>

CHILDREN'S COURT MEDIATION FORMS AND DOCUMENTS

- **CASE REFERRAL INTAKE SHEET**
- **MEDIATOR CHECKLISTS**
- **PROGRAM PROCEDURES & FLOWCHART FOR MEDIATING PACAS**
- **COURT IMPROVEMENT PROJECT BEST PRACTICES FOR MEDIATING PACAS**
- **FRAMEWORK FOR PACA MEDIATIONS**
- **SCREENING QUESTIONS FOR OPEN ADOPTION REFERRALS**
- **MEDIATION CONFIRMATION NOTICE**
- **PARENT PREP QUESTIONS** (English & Spanish)
- **AGREEMENT TO MEDIATE**
- **REPORT OF MEDIATION FORM & INSTRUCTIONS**
- **MEDIATION AGREEMENT**
- **POST ADOPTION CONTACT AGREEMENT**
- **NO AGREEMENT LETTER**
- **FAMILY FEEDBACK FORMS** (English & Spanish)
- **MEDIATION CASE RECORD**
- **INVOICE**
- **ORDERS FOR MEDIATION**
 - **ORDER FOR MEDIATION**
 - **STIPULATED ORDER FOR MEDIATION**
- **MEDIATOR ASSESSMENT FORM** (For use during mediator observations.)
- **MEDIATOR CONTINUING EDUCATION – STANDARD REPORTING FORM**
- **CHILDREN'S CODE AND ASFA TIMELINES**
- **MODEL STANDARDS OF CONDUCT FOR MEDIATORS**